



**Rule and Interpretive/Policy Statement Review Checklist**  
(This form must be filled out electronically.)

**This form is to be used when the current version of the rule(s) has/have not previously been reviewed. When reviewing an interpretive or policy statement, this document is to be used only if the review of the statement is not in conjunction with the review of a rule.**

All responses should be **bolded**.

Document(s) Reviewed (include title): **WAC 458-20-119 (Sales of meals)**

Date last adopted/issued: **June 19, 1999**

Reviewer: **Mark Mullin**

Date review completed: **May 7, 2002**

Briefly explain the subject matter of the document(s):

**Rule 119 explains the application of the B&O and retail sales taxes to the sale of meals, including meals furnished without a specific charge and meals furnished to employees.**

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

**1. Public requests for review:**

| YES | NO       |  |
|-----|----------|--|
|     | <b>X</b> | Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request? |

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

**2. Need:**

| YES      | NO       |   |
|----------|----------|---|
| <b>X</b> |          | Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)                            |
|          | <b>X</b> | Is the information provided in the document so obsolete that it is of little value, warranting the repeal or revision of the document?  |
|          | <b>X</b> | Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)  |
| <b>X</b> |          | Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.) |



Please explain.

**This rule is necessary to clarify the taxability of meals that are sold or furnished at no charge, including meals furnished to employees. Rule 119 is not obsolete. It was last revised in 1999 and is currently providing useful information.**

**3. Related interpretive/policy statements, court decisions, BTA decisions, and WTDs:**

Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an interpretive or policy statement. Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.

(a)

| YES | NO |   |
|-----|----|---|
|     | X  | Are there any interpretive or policy statements that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)  |
|     | X  | Are there any interpretive or policy statements that should be cancelled because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.) |
| X   |    | Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that provide information that should be incorporated into this rule?   |
| X   |    | Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?  |

(b)

| YES | NO |   |
|-----|----|---|
|     |    | Should this interpretive or policy statement be incorporated into a rule?   |
|     |    | Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that affect the information now provided in this document? |
|     |    | Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?            |

If the answer is "yes" to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

**The following court decision contains information that should be incorporated into Rule 119:**

- **Sacred Heart Med. Ctr. v. Dep't of Rev., 88 Wn. App. 632, 946 P.2d 409 (1997).** The issue in this case was whether, under RCW 82.08.0293(3)(b), non-profit nursing homes were entitled to a refund of sales taxes paid on the purchase of prepared meals from a hospital. The meals were provided to the residents of the nursing homes who paid a flat fee for all services provided by the nursing homes, including the meals. The court held that the nursing homes were entitled to a refund as the



ultimate recipient of the meal was a senior citizen, disabled person, or low-income person. This holding conflicts with subsection (3)(b) of Rule 119 which states that the “exemption [provided by RCW 82.08.0293(3)(b)] does not apply to purchases of prepared meals by not-for-profit organizations, such as hospitals, which provide the meals to patients as a part of the services they render.”

The following WTDs contain information that should be incorporated into Rule 119 the next time it is revised:

- 20 WTD 47 (2001) and 19 WTD 398 (2000). These determinations held that meals provided to the taxpayers’ managers at no charge were taxable as retail sales.
- 17 WTD 243 (1998). The taxpayer was a food service contractor selling meals in an employee cafeteria. The determination held that subsidies paid by the employer to the taxpayer to cover any operational loss and to pay the taxpayer a profit were not subject to retailing B&O and retail sales taxes.

Consideration should also be given to clarifying whether meals provided to volunteer “employees” are subject to tax.

Subsection (2)(a)(iv) explains that boarding houses and other such places offering meals and nontransient lodging are considered to be making retail sales of meals. When next revising this rule, the Department should review these instructions to determine if this position should be retained. The reviewer notes that Det. 90-252, 10 WTD 041, explains that a licensed boarding home is subject to service and other B&O tax on revenues attributable to a dining facility operated for residents.

#### 4. Clarity and Effectiveness:

| YES | NO |  |
|-----|----|--|
| X   |    | Is the document written and organized in a clear and concise manner?   |
| X   |    | Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)  |
| X   |    | Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities or help ensure that the tax law and/or exemptions are consistently applied?) |
|     | X  | Do changes in industry practices warrant repealing or revising this document?  |
|     | X  | Do administrative changes within the Department warrant repealing or revising this document?   |

Please explain.

**Rule 119 is well written and provides important information for taxpayers and employees of the Department of Revenue.**

#### 5. Intent and Statutory Authority:

| YES | NO |  |
|-----|----|--|
| X   |    | Does the Department have sufficient authority <b>to adopt</b> this document? (Cite the statutory authority in the explanation below.)                          |
| X   |    | Is the document consistent with the legislative intent of the statute(s) that authorize it? (I.e., is the information provided in the document consistent with |



|  |          |  |
|--|----------|--|
|  |          | the statute(s) that it was designed <b>to implement</b> ?) If “no,” identify the specific statute and explain below. List all statutes being implemented in Section 9, below.) |
|  | <b>X</b> | Is there a need to recommend legislative changes to the statute(s) being implemented by this document?   |

Please explain.

**RCW 82.32.300 authorizes the Department of Revenue to make and publish rules necessary to enforce to provisions of chapters 82.02 through 82.23B, 82.27 and 82.32 RCW.**

**Rule 119 is in need of revision to correct inaccurate information in subsection (3)(b) regarding the sales tax exemption provided by RCW 82.08.0293(3)(b). The rule indicates that the purchase of prepared meals by nonprofit organizations that provide meals as part of the services they render to senior citizens, disabled persons, or low-income persons is not exempt from sales tax. This information is in conflict with the decision in Sacred Heart Med. Ctr. v. Dep’t of Rev., 88 Wn. App. 632, 946 P.2d 409 (1997).**

**6. Coordination:** Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

| YES | NO       |   |
|-----|----------|---|
|     | <b>X</b> | Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency? |

Please explain.

**The Department of Revenue has the exclusive authority to administer the B&O, retail sales and use taxes with respect to the subject matter addressed in Rule 119.**

**7. Cost:** When responding, consider only the costs imposed by the document being reviewed and not by the statute.

| YES | NO       |  |
|-----|----------|--|
|     | <b>X</b> | Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.) |

Please explain.

**This is an interpretive rule that does not impose any new or additional administrative burdens on taxpayers that are not imposed by law.**

**8. Fairness:** When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

| YES      | NO       |   |
|----------|----------|---|
| <b>X</b> |          | Does the document result in equitable treatment of those required to comply with it?                    |
|          | <b>X</b> | Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community? |



|  |          |   |
|--|----------|---|
|  | <b>X</b> | Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community? |
|--|----------|---|

Please explain.

**The information provided in Rule 119 applies equally to all similarly situated taxpayers.**

**9. LISTING OF DOCUMENTS REVIEWED:** Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented: **To the extent the following statutes apply to sales of meals:**

- **RCW 82.04.040** "Sale," "casual or isolated sale."
- **RCW 82.04.050** "Sale at retail," "retail sale."
- **RCW 82.04.060** "Sales at wholesale," "wholesale sale."
- **RCW 82.04.070** "Gross proceeds of sales."
- **RCW 82.04.080** "Gross income of the business."
- **RCW 82.04.190** "Consumer."
- **RCW 82.04.220** "Business and occupation tax imposed."
- **RCW 82.04.250** "Tax on retailers."
- **RCW 82.04.270** "Tax on wholesalers, distributors."
- **RCW 82.04.290** "Tax on . . . other business or service activities."
- **RCW 82.08.010** "Definitions."
- **RCW 82.08.020** "Tax imposed—Retail sales . . . ."
- **RCW 82.08.0293** "Exemptions—Sales of food products for human consumption."
- **RCW 82.08.050** "Buyer to pay, seller to collect tax . . . ."
- **RCW 82.08.055** "Advertisement of price."
- **RCW 82.12.010** "Definitions."
- **RCW 82.12.020** "Use tax imposed."
- **RCW 82.12.0293** "Exemptions—Use of food products for human consumption."

Interpretive and/or Policy Statements (e.g., ETAs, PTAs, IAGs):

Court Decisions:

**Sacred Heart Med. Ctr. v. Dep't of Rev., 88 Wn. App. 632, 946 P.2d 409 (1997).**

**The issue in this case was whether, under RCW 82.08.0293(3)(b), nursing homes were entitled to a refund of sales taxes paid on prepared meals purchased from a hospital. The meals were provided to the residents of the nursing homes who paid a flat fee for all services provided by the nursing homes, including the meals. The court held that the nursing homes were entitled to a refund.**

Board of Tax Appeals Decisions (BTAs):



Appeal Division Decisions (WTDs):

- **20 WTD 47 (2001) and 19 WTD 398 (2000).** These determinations held that meals provided to the taxpayers' managers at no charge were taxable as retail sales.
- **17 WTD 359 (1998).** This determination held that liquor stolen by the taxpayer's bartenders was not taxable as employee meals.
- **17 WTD 243 (1998).** The taxpayer was a food service contractor selling meals in an employee cafeteria. The determination held that subsidies paid by the employer to the taxpayer to cover any operational loss and to pay the taxpayer a profit were not subject to retailing B&O and retail sales taxes.
- **10 WTD 041 (1991).** Income attributable to a dining facility at a boarding home is subject to service and other activities B&O tax.

Attorney General Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

- **WAC 458-20-124 "Restaurants, cocktail bars, taverns and similar businesses."**
- **WAC 458-20-167 "Educational institutions, school districts, student organizations, and private schools."**
- **WAC 458-20-168 "Hospitals, medical care facilities, and adult family homes."**
- **WAC 458-20-175 "Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce."**
- **WAC 458-20-181 "Vessels, including log patrols, tugs and barges, operating upon waters in the state of Washington."**
- **WAC 458-20-244 "Food products."**
- **ETA 516.08.114/244 "Donations to Meal Providers"**
- **Audit Directive 8168.1 "Retirement Homes"**
- **Audit Directive 8168.2 "Congregate Care Facilities"**

**10. Review Recommendation:**

- X**        **Amend**
- Repeal/Cancel** (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
- Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

**Explanation of recommendation:** Provide a brief summary of your recommendation. If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, and court decisions); or



- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, and court decisions).

**This rule needs to be revised to correct inaccurate information in subsection (3)(b) in light of Sacred Heart Med. Ctr. v. Dep't of Rev., 88 Wn. App. 632, 946 P.2d 409 (1997). In addition, consideration should be given to incorporating information from the WTDs identified in section 3 above. Also, consideration should be given to clarifying whether meals provided to volunteer "employees" are subject to tax.**

**11. Manager action:**    Date: \_\_\_\_\_

\_\_\_\_\_ Reviewed and accepted recommendation

Amendment priority:

\_\_\_\_\_ 1  
\_\_\_\_\_ 2  
\_\_\_\_\_ 3  
\_\_\_\_\_ 4